

Date Signed: April 12, 1988

MEMORANDUM

SUBJECT: Enforcement Actions Against Systems Which Are "Intermittent" Violators of the National Primary Drinking Water Regulations

FROM: John R. Trax, Chief  
Drinking Water Branch

TO: Drinking Water Branch Chiefs  
Regions I - X

At our last compliance and enforcement conference call, a situation was discussed which we believe requires a fuller explanation than was possible during the call. The issue can be described as follows: a public water system (PWS) is identified as being in violation of the National Primary Drinking Water Regulations (NPDWRs). (The system does not have to be a significant noncomplier [SNC]). The Region, upon noting the violation, begins to take action, for example, issuing a Notice of Violation (NOV) or discussing the situation with the State and agreeing on a plan of action. At the end of the next compliance period, however, the system is noted as being in compliance. The question raised is should the Region proceed with a planned enforcement action in this situation.

First, it is important to note that EPA has the authority to take an enforcement action against a PWS for violations of the NPDWRs, whether or not the system has returned to compliance. The issue then is: do we believe that an enforcement action would be an appropriate use of our enforcement discretion and resources?

The ultimate answer depends upon a careful evaluation of all the circumstances in the case; however I believe we can outline some general guidance on where we believe enforcement actions would be appropriate.

Enforcement action would be appropriate if: (a) the system has a history of violations (this is true even if the system has never attained SNC status), that is, the system tends to come in and out of compliance; or (b) the system has basic deficiencies which caused or contributed to the violations; and (c) there is evidence to indicate that these deficiencies which caused or contributed to the violation have not been corrected. These conditions indicate that a compliance problem exists which may be able to be remedied by an enforcement action.

Enforcement action may not be appropriate if: (a) the system does not have a history of violations, and (b) it appears from the facts that the cause of the violation has been corrected; or (c) that the violation was due to a special set of circumstances which is not likely to recur. Under these circumstances, the system's compliance status should be monitored carefully and any violation should be investigated.

Another question which is often raised is what should be done if a proposed administrative order is issued and the system comes back into compliance or agrees to take the necessary corrective actions to return to compliance. In this case, we believe that the Regions should continue with the process and issue the final administrative order. The reason for this is that a final administrative order is enforceable against the respondent should respondent fail to comply with its terms. A proposed administrative order is not enforceable.

I hope that this discussion clarifies the points which we were trying to make in the March conference call. As with many enforcement policies, it is difficult to establish absolute rules which must be followed since so much depends on the facts of an individual case.

If you have any questions on this, please contact Betsy Devlin on FTS 382-2303.

cc: PWS Enforcement Coordinators  
Carl Reeverts  
Paul Baltay